THOMAS J. FLORENCE

IBLA 86-1070 through 86-1083 Decided July 27, 1998

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. W-70475, W-70478, W-70480 through W-70491.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Offers to Lease--Wilderness Act

There is no time limit within which a decision to reject a lease offer or to issue a lease must be made. An oil and gas lease offer filed for lands which are subsequently designated by Congress as a component of the National Wilderness Preservation System are withdrawn from disposition under the mineral leasing laws effective Jan. 1, 1984. As the filing of an oil and gas lease offer creates no entitlement to a lease, a BLM decision rejecting oil and gas lease offers for lands within a designated wilderness area will be affirmed in the absence of a showing of valid existing rights.

2. Constitutional Law: Due Process

An offer filed for an oil and gas lease creates no property interest. It is a mere hope or expectancy, and rejection of the offer does not violate consti- tutional due process where the land becomes unavail- able for leasing prior to issuance of a lease.

3. Accounts: Refunds--Oil and Gas Leases: Rentals

Refunds of advance rental payments tendered in connection with noncompetitive oil and gas lease offers which are rejected, are properly issued to an offeror pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1734(c) (1982). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

APPEARANCES: Thomas J. Florence, Marietta, Georgia, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Thomas J. Florence has appealed from 14 separate decisions issued March 28, 1986, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offers.

On December 19, 1979, appellant filed 14 noncompetitive oil and gas lease offers with BLM for lands in T. 39 N., R. 112 W., and T. 40 N., R.'s 113 and 114 W., sixth principal meridian, Teton County, Wyoming, within the Teton National Forest. 1/ The oil and gas plats covering the lands in the lease offers show that the Forest Service (FS) is the surface managing agency for these lands. The case files indicate that on January 30, 1980, BLM forwarded a request for a report and recommendations on the lease offers to the FS. By letter dated January 23, 1985, the FS, Intermountain Region, advised BLM that appellant's lease offers should be rejected. That letter states in part:

> As you know, the Wyoming Wilderness Act of 1984 (P.L. 98-550) was signed by the President on October 30, 1984.
>
> The Forest Service had suspended action on oil and gas lease offers that involved lands in RARE II Recommended Wilderness or Further Planning Areas. The passage of the Wyoming Wilderness Act enables us to continue the processing of those offers. In order to facilitate the process we are identifying (on the enclosed list) those offers which:
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> 1. Are completely within a Wilderness area and should be rejected in their entirety (page 1 of enclosure).

All of appellant's lease offers are listed on page 1 of the enclosure as within the Gros Ventre Wilderness. The Gros Ventre Wilderness was designated effective October 30, 1984, by the Wyoming Wilderness Act of 1984 (P.L. 98-550, 98 Stat. 2807), in furtherance of the Wilderness Act of 1964, 16 U.S.C. || 1131, 1132 note (1982). In its decisions, BLM quotes from

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1/ These appeals were docketed individually, but have been consolidated for consideration by the Board sua sponte. The following are the appeal docket numbers with the serialized lease offer involved:

IBLA 86-1070 - W 70475	86-1071 - W 70478
86-1072 - W 70480	86-1073 - W 70481
86-1074 - W 70482	86-1075 - W 70483
86-1076 - W 70484	86-1077 - W 70485
86-1078 - W 70486	86-1079 - W 70487
86-1080 - W 70488	86-1081 - W 70489
86-1082 - W 70490	86-1083 - W 70491

section 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. | 1133(d)(3) (1982):

> [S]ubject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

The decision also cites 43 CFR 3109.3, the regulation implementing the above section, and 43 CFR 3101.7-4(b) which mandates that the authorized officer reject any lease offer on lands for which the surface managing agency withholds consent required by statute. BLM concluded that the lands were not open to mineral leasing and therefore rejected appellant's offers. BLM advised appellant that if an appeal was not taken, a refund of the first year's rental would be initiated.

Appellant does not argue that his lease offers do not cover lands situated within the Gros Ventre Wilderness Area; however, he does point out that the filing of his lease offers pre-dates the passage of the Wyoming Wilderness Act of 1984 which designated the wilderness, and the 1985 FS letter which recommended rejection of his offers. Apparently, appellant is suggesting that the filing of his lease offers created some rights in the lands which were not affected by the subsequent designation of the lands as a wilderness area. He complains that his offers were kept in a pending status for an unreasonably long time, and that he expended large sums of money, in addition to filing fees and rental charges, in connection with his offers. He contends that rejection of his offers violates due process of law and requests refunds of interest on his rental payments, as well as reimbursement of other expenses. Finally, appellant requests first priority to acquire a lease should the lands again be opened to leasing. 2/

[1, 2] While it is true that appellant's offers were pending for some time, there is no time limit within which a decision to reject a lease offer or to issue a lease must be made. Justheim Petroleum Co. v. Department of the Interior, 769 F.2d 668, 670 (10th Cir. 1985); Shaw Resources, Inc., 98 IBLA 96 (1987). Prior to BLM taking any action on appellant's offers it had to consult with the FS. The FS recommendations were not immediately forthcoming. When FS did respond, it recommended rejection of the offers, explaining that the lands within the lease offers were included among those lands designated as part the Gros Ventre Wilderness Area. Thus, pursuant to section 4(d)(3) of the Wilderness Act of 1964, supra, and 43 CFR 3109.3, the lands were no longer available for oil and gas leasing, and BLM had no alternative but to reject appellant's lease offers.

2/ There is no basis for entertaining such a request since an offer which is properly rejected may not be reinstated, or serve as a vehicle to provide an offeror priority in obtaining a lease should the lands become available for leasing.

In filing his offers to lease, appellant acquired no property interest. An application for an oil and gas lease is a mere hope or expectancy rather than a vested property right. Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Altex Oil Corp., 73 IBLA 73 (1983). As the court stated in McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974): "[T]he courts have consistently held that no right to receive an oil and gas lease is obtained by the filing of a lease offer." The discretion reserved to the Secretary of the Interior to accept or reject a lease offer also means that the Secretary is not precluded from withdrawing the land from mineral leasing and then rejecting a previously filed lease offer on the basis of that withdrawal. Until issuance of a lease, a lease offer will not be considered a valid existing right, which is "immune from denial or extinguishment by the exercise of secretarial discretion" and thus excepted from the effect of a withdrawal. The Bureau of Land Management Wilderness Review and Valid Existing Rights, Solicitor's Opinion, 88 I.D. 909, 912 (1981). Thus, BLM could properly reject a lease offer regardless of the fact that it was filed prior to Secretarial or congressional action making the land unavailable for leasing. See Schraier v. Hickel, supra; Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); Richard M. Clark, 92 IBLA 353 (1986). Under the circumstances, appellant's arguments that the length of time it took BLM to adjudicate his lease offers and the subsequent rejection deprived him of constitutional due process are without merit.

[3] Appellant is entitled to only a refund of the first year's rental submitted with his lease offers. Statutory authorization for refunds is provided by section 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1734(c) (1982), as follows:

> (c) Refunds
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> In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

The Board has held that refunds are appropriate in instances where lease rentals were paid for lands which were never subject to oil and gas leasing and where the putative lessees derived no benefits from the lease. Romola A. Jarret, 63 IBLA 228 (1982). Exaction of interest from the Government, however, requires statutory authority. Rosenman v. United States, 323 U.S. 658, 663 (1945). In United States v. Thayer-West Point Hotel Co., 329 U.S. 585, 588 (1947), the Court referred to the traditional rule that interest cannot be recovered against the United States upon unpaid accounts or claims in the absence of an express provision to the contrary in a relevant statute or contract. In these appeals, no such provision authorizes a recovery of interest in addition to the refund authorized by the statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

John H. Kelly
Administrative Judge